

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LARRY DEVEL STEWART,

Petitioner,

Civil No. 2:15-CV-11843
HON. TERRENCE G. BERG

v.

TONY TRIERWEILER,

Respondent,

_____ /

**ORDER DIRECTING THE CLERK OF THE COURT TO
TRANSFER THE APPLICATION TO PROCEED WITHOUT
PREPAYING FEES AND COSTS ON APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH
CIRCUIT**

On July 31, 2018, this Court denied the petition for writ of habeas corpus and declined to issue a certificate of appealability or leave to appeal *in forma pauperis*. ECF No. 25.

On September 17, 2018, Petitioner filed a notice of appeal with the United States Court of Appeals for the Sixth Circuit. ECF No. 27. Petitioner also filed an application to proceed without prepayment of fees and costs on appeal with this Court. ECF No. 28. For the reasons stated below, the Court orders that the application be transferred to the United States Court of Appeals for the Sixth Circuit.

A notice of appeal generally “confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal.” *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam)); *Workman v. Tate*, 958 F.2d 164, 167 (6th Cir. 1992). Petitioner’s notice of appeal divests this Court of jurisdiction to consider his motion that he be permitted to proceed *in forma pauperis* in the Sixth Circuit Court of Appeals. See *Johnson v. Woods*, No. 5:12–11632; 2013 WL 557271, at *2 (E.D. Mich. Feb. 13, 2013); *Glick v. U.S. Civil Service Com’n*, 567 F. Supp. 1483, 1490 (N.D. Ill. 1983); *Brinton v. Gaffney*, 560 F. Supp. 28, 29-30 (E.D. Pa. 1983). Because jurisdiction of this action was transferred from the district court to the Sixth Circuit Court of Appeals upon the filing of the notice of appeal, petitioner’s application to proceed *in forma pauperis* on appeal would be more appropriately addressed to the Sixth Circuit. In the interests of justice, this Court can order that Plaintiff’s application to proceed without prepayment of fees and costs be transferred to the Sixth Circuit for that court’s consideration. See *Baker v. Perry*, No. 2:12–10424; 2012 WL 6097323, at *2 (E.D. Mich. Dec. 6, 2012).

IT IS HEREBY ORDERED that the Clerk of the Court transfer Petitioner's "Application to Proceed Without Prepaying Fees and Costs on Appeal" (ECF No. 28) to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631.

SO ORDERED.

Dated: November 30, 2018 s/Terrence G. Berg

TERRENCE G. BERG

UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on November 30, 2018.

s/A. Chubb

Case Manager